Western Railroad Company against J. D. Honaker and others. Judgment for defendants, confirming an award of commissioners, and petitioner brings error, and defendants except and assign cross-errors. Reversed and remanded.

White, Penn & Penn of Abingdon, *Jackson & Henson,* of Roanoke, and *Williams & Farrier,* of Pearisburg, for plaintiff in error.

Williams & Williams, of Wytheville, and *J. Powell Royall,* of Tazewell, for defendants in error.

EUREKA LAND CO. *v.* WATTS.

Sept. 11, 1916.

[89 S. E. 968.]

1. Easements (§ 48 (6)*)—Implication—Implied Reservation—Way of Necessity.—Where for many years prior to the conveyance of part of a tract of land, the vendor and her predecessors had used a certain way without substantial deviation, the purchaser, on platting the tract into city lots, could not cut off such way and arbitrarily require the vendor to use an alley, but, on refusing her the use of regularly platted streets, was obliged to maintain the old way.

[Ed. Note.—For other cases, see Easements, Cent. Dig. §§ 103, 107; Dec. Dig. § 48 (6).* 4 Va.-W. Va. Enc. Dig. 861.]

2. Easements (§ 48 (3)*)—Implication—Implied Reservation.—When a right of way is reserved over a tract of land without any designation of the location, if there be in fact at the time of the reservation a well-defined road over the land which is in actual use by the persons in whose favor the right is reserved, the way in use will be treated as the one which the parties contemplated.

[Ed. Note.—For other cases, see Easements, Cent. Dig. §§ 103, 104; Dec. Dig. § 48 (3).* 4 Va.-W. Va. Enc. Dig. 861.]

3. Easements (§ 48 (2)*)—Implication—Implied Reservation—Way of Necessity.—If there is no way in use at time of sale of land, the owner of the servient estate may fix the location of a way of necessity, with due regard to the terms of the conveyance.

[Ed. Note.—For other cases, see Easements, Cent. Dig. § 103; Dec. Dig. § 48 (2).* 4 Va.-W. Va. Enc. Dig. 861.]

4. Easements (§ 48 (2)*)—Implication—Implied Reservation—Way of Necessity.—When, at the time of the conveyance, no way is in use and the servient owner fails to locate the way, the owner of the dominant estate may adopt his own route, and a subsequent une-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

quivocal acquiescence therein, for however short a time, is binding upon the servient owner.

[Ed. Note.—For other cases, see Easements, Cent. Dig. § 103; Dec. Dig. § 48 (2).* 4 Va.-W. Va. Enc. Dig. 861.]

5. Easements (§ 48 (6)*)—Implication—Implied Reservation—Way of Necessity.—When a way is once located it cannot be changed by either party without the consent of the other.

[Ed. Note.—For other cases, see Easements, Cent. Dig. §§ 103, 107; Dec. Dig. § 48 (6).* 4 Va.-W. Va. Enc. Dig. 861.]

6. Easements (§ 49*)—Implication—Implied Reservation—Way of Necessity.—Mere temporary deviations from an established way on account of its condition will not affect the right of the dominant owner.

[Ed. Note.—For other cases, see Easements, Cent. Dig. § 108; Dec. Dig. § 49.* 4 Va.-W. Va. Enc. Dig. 861.]

Appeal from Circuit Court of City of Roanoke.

Suit by Mrs. J. Allen Watts against the Eureka Land Company. Decree for plaintiff, and defendant appeals. Affirmed.

Jackson & Henson, of Roanoke, for appellant.

Hall, Woods & Coxe and *Harvey B. Apperson,* all of Roanoke, for appellee.

GISH *v.* CITY OF ROANOKE et al.

Sept. 11, 1916.

[89 S. E. 970.]

1. Easements (§ 17 (1)*)—Rights of Way—Implied Grant.—Where at the time of a conveyance there was in use a well-defined way, though it was not platted as a street, and the conveyance referred to it as G. street and a subsequent conveyance definitely fixed its location as between certain lots, the right to the way as then located was fixed, and subsequent purchasers could not cut off such way to the detriment of an adjoining owner.

[Ed. Note.—For other cases, see Easements, Cent. Dig. § 45; Dec. Dig. § 17 (1).* 4 Va.-W. Va. Enc. Dig. 856.]

2. Easements (§ 12 (3)*)—Rights of Way—Way of Necessity.—That a deed referred to a way as "G. street," and there was no dedication of a way as "G. street," does not affect the right of a subsequent purchaser to maintain the way, which was actually opened and in well-defined use at the time of such conveyance.

[Ed. Note.—For other cases, see Easements, Cent. Dig. § 41; Dec. Dig. § 12 (3).* 4 Va.-W. Va. Enc. Dig. 855.]

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.